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 19 And Debtor-in-Possession, Don G. White

20 **UNITED STATES BANKRUPTCY COURT**

21 **DISTRICT OF NEVADA**

22 In re

23 Case No. BK-S-10-19402-LBR

24 DON GROVER WHITE,  
 25 aka DON G. WHITE,

26 Chapter 11

27 Debtor and Debtor-in-Possession.

28 **DEBTOR'S LIMITED OPPOSITION TO  
 COMMITTEE OF UNSECURED  
 CREDITORS' MOTION FOR  
 APPOINTMENT OF EXAMINER  
 PURSUANT TO 11 U.S.C. § 1104(C)**

29 Hearing Date: December 8, 2010

30 Hearing Time: 2:00 p.m.

31 Place: Courtroom 1

32  
 33 Don Grover White, the debtor and debtor-in-possession in the above-captioned case (the  
 34 “Debtor”), hereby files this “*Limited Opposition to Committee of Unsecured Creditors’ Motion*  
 35 *for Appointment of Examiner Pursuant to 11 U.S.C. § 1104(c)*” (the “Limited Opposition”).

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1        By this Limited Opposition, the Debtor does not intend to dispute the Committee's right  
 2 and responsibility to fully understand and analyze the Debtor's financial affairs in this case.  
 3 However, the Debtor does not believe that the extreme step of appointing an examiner is  
 4 necessary or appropriate in a case where the grounds for such an appointment is a purported "lack  
 5 of financial expertise among the Committee members." (Motion, ¶ 12).

6        Rather, the Debtor believes - and has proposed to the Committee – that the more  
 7 appropriate means for the Committee to fulfill its statutory duties in this case is to hire a financial  
 8 advisor to review and advise the Committee with respect to the comprehensive financial  
 9 information already provided to the Committee by the Debtor.

10      As acknowledged by the Committee in the Motion, this is a case where the Debtor has  
 11 fully cooperated with the Committee since its appointment approximately 3 months ago. The  
 12 Debtor has provided – and will continue to provide – to the Committee all of the financial data  
 13 and other information it requires to fulfill its duties in this case.<sup>1</sup> The Committee simply needs an  
 14 advisor to assist it in analyzing the financial information it has received. The Debtor has agreed  
 15 that a financial advisor for the Committee is appropriate and is hopeful that the Committee's  
 16 concerns raised in the Motion will be adequately addressed in this fashion. Appointment of an  
 17 examiner, however, would only result in unnecessary expense and duplication of effort.

18      Not only is an examiner not necessary as a practical matter under the circumstances of  
 19 this case, but it is also not legally mandated. As recognized by the Committee in its Motion,  
 20 there is a split among the courts on the issue of whether the appointment of an examiner is  
 21 mandatory or discretionary under Section 1104(c) of the Bankruptcy Code where certain  
 22 threshold factors are met. The Debtor submits that the better reasoned cases hold that the

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24      <sup>1</sup>Since the appointment of the Committee, the Debtor has provided to the Committee, among other things,  
 25 the following documentation: Bank statements, tax-related documents, numerous documentation  
 26 evidencing the sale and/or transfer of the Debtor's interests in property, financial statements and/or  
 27 information for those entities in which the Debtor has a substantial or controlling interest, documents  
 28 evidencing any insider transactions referenced in Rider 3.c of the Statement of Financial Affairs,  
 documents evidencing the transactions with secured creditors in Class 1, documents evidencing all transfers  
 from the Debtor's revocable trust to his irrevocable trust, including copies of the Debtor's trust agreements,  
 and a copy of the "Catalyst Report," which includes, among other things, appraisal and/or valuation  
 information.

1 appointment of an examiner under Section 1104(c) is discretionary and is dependent on the facts  
2 and circumstances of a particular case. Where the facts and circumstances do not warrant the  
3 appointment of an examiner – or where such an appointment would be unnecessary, duplicative  
4 or burdensome, the better reasoned decisions have either denied the appointment of an examiner  
5 outright, or have appointed an examiner with limited or no powers. See e.g., In re Spansion, Inc.,  
6 et al., 426 B.R. 114, 126-28 (Bankr. D. Del. 2010). This is especially the case where (as in this  
7 case), there has been no evidence presented of fraud, dishonesty, incompetence, misconduct or  
8 mismanagement of the debtor. Id.

In any event, even if an “examiner” were to be appointed in this case, the Committee has acknowledged that its role and compensation should be limited to a realistic and practical scope. The Debtor agrees with the Committee and believes that the appropriate scope would be akin to a financial advisor – to which the Debtor has already agreed.

Based on the foregoing, the Debtor respectfully submits that the appointment of an examiner in this case is neither necessary nor appropriate, and urges the Committee to immediately retain a financial advisor to review and advise the Committee regarding the Debtor's financial and business affairs so that this case can move forward as expeditiously as possible.

Respectfully submitted,

DATED: November 24, 2010.

LAW OFFICES OF AMY N. TIRRE,  
A Professional Corporation

BY: /s/ Amy N. Tirre  
Amy N. Tirre, Esq.

## Local Counsel for Debtor and Debtor-in-Possession